

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 09-cv-02376-MSK

WILLIAM RECTOR,

Plaintiff,

v.

TOYOTA MOTOR SALES, U.S.A., INC.,

Defendant.

ORDER REMANDING CASE

THIS MATTER comes before the Court *sua sponte*, upon a Notice of Removal (#1) of a civil action from a Colorado District Court. This Court has reviewed the Notice of Removal and all documents referred to in it, including the State Court Complaint and Colorado Civil Cover Sheet.

In the Notice of Removal, the Defendant asserts that this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. The Defendant contends that the requisite amount in controversy can be inferred from the factual allegations in the State Court Complaint.

The Plaintiff commenced this action in the Denver County, Colorado District Court. The Plaintiff brings two claims, strict product liability and negligence, against the Defendant for injuries he suffered when the airbags unexpectedly deployed in a vehicle in which he was a passenger. The State Court Complaint does not specify the amount of monetary relief sought, only that the Plaintiff seeks damages for “[l]oss of earnings, mental anguish and duress during and after the accident, physical pain and suffering during and after the incident and loss of

enjoyment of life.” The State Court Complaint identifies that Plaintiff’s ear was injured and alleges that, as a consequence, the Plaintiff suffered “permanent and severe hearing loss in his right ear.” These allegations, however, do not identify the degree of loss suffered, the impact of the loss on the Plaintiff’s overall ability to hear, or how the loss translates into a measure of damages. The showing of the amount in controversy is conclusory, and therefore insufficient to demonstrate that the Plaintiff seeks recovery of at least \$75,000.

Consistent with the reasoning in *Baker v. Sears Holding Corp.*, 557 F. Supp. 2d 1208 (D. Colo. 2007) (reference to a civil cover sheet for amount in controversy is insufficient) and *Klein v. State Farm Mut. Auto. Ins. Companies*, D. Colo. Case No. 08-cv-02257-MSK, 2008 WL 4948775 (Nov. 18, 2008) (references to a civil cover sheet and conclusory statements in underlying Complaint are insufficient), the Court finds that the Defendant has not shown specific facts, which if true, would demonstrate that the amount in controversy is at least \$75,000. Accordingly, this Court lacks subject matter jurisdiction based upon 28 U.S.C. § 1332.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1447(c) this action is **REMANDED** to the District Court from which it was removed.

Dated this 7th day of October, 2009

BY THE COURT:



Marcia S. Krieger
United States District Judge